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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/015,078	01/29/98	SUERBAUM	2356-0073-01

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HM12/1004

EXAMINER
TURNER, S

ART UNIT	PAPER NUMBER
1645	8

DATE MAILED: 10/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/015,078

Applicant(s)

Suerbaum

Examiner

Sharon L. Turner, Ph.D.

Group Art Unit

1645



☒ Responsive to communication(s) filed on 8-16-99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 31-42 is/are pending in the application.

Of the above, claim(s) 31-36 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 37-42 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1645

DETAILED ACTION

1. The Group and/or Art Unit of U.S. Patent application SN 09/015,078 has changed. In order to expedite the correlation of papers with the application please direct all future correspondence to Examiner Turner, Technology Center 1600, Art Unit 1645.

Priority

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in France on 4-7-95. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said application, since the United States application was filed more than twelve months thereafter. Therefore, the priority date of instant claims is the filing date 6-28-96.

Information Disclosure Statement

3. The information disclosure statement filed 1-29-98 has been considered to the extent indicated on PTO-1449. References not considered were unavailable from the parent application. Applicant is requested to submit translated relevancy statements and/or copies of the references as indicated for consideration.

Drawings

4. Figures 1-13 are absent instant application.

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Election/Restriction

5. Applicant's election with traverse of Group II, species a) a bacterial strain lacking the hook protein of *H. pylori* in Paper No. 8 is acknowledged. The traversal is on the ground(s) that there is no serious burden on the examiner. This is not found persuasive because as set forth the groups are distinct, one involving nucleic acids, the other involving immunological detection, the species are distinct by phenotypic characteristics. Since a search for group I is beyond the scope of a search for group II, the requirement is still deemed proper and is therefore made FINAL.

6. Claims 31-36 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 7.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. What is able to hybridize the mutant or wild-type *H. pylori*? What has been amplified?

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9. Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. What is obtained by the steps? Their metes and bounds of the claim are unclear due to the use of the terminology "such as," see MPEP 2173.05(d).

Claim Rejections - 35 USC § 102 or 103

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Haas et al, Mol. Microbiol, 1993, 8(4), pp. 753-60. Haas et al disclose aflagellate mutants of *Helicobacter pylori* generated by genetic transformation of naturally competent strains using transposon shuttle mutagenesis. Immunoblots of cell lysates of the *H. pylori* mutants with an antiserum raised against the C-terminal portion of recombinant *H. pylori* major flagellin (FlaA) confirmed the absence of the 54kDa FlaA protein, see abstract p. 753.

Status of Claims

12. No claims are allowed.


13. Any inquiry of a general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Art Unit: 1645

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for Group 1600 is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Turner, Ph.D. whose telephone number is (703) 308-0056. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, can be reached at (703) 308-3995.

Sharon L. Turner, Ph.D.
September 27, 1999


ANTHONY C. CAPUTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600